

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suede G. Kelly.

PJM Interconnection, L.L.C.

Docket No. ER04-457-000

ORDER ACCEPTING COMPLIANCE FILING SUBJECT  
TO THE FILING OF CERTAIN REVISED TARIFF SHEETS

(Issued July 8, 2004)

1. On January 20, 2004, PJM Interconnection, L.L.C. (PJM), a Regional Transmission Organization (RTO), filed revisions to its existing Open Access Transmission Tariff (PJM Tariff) to comply with Order No. 2003.<sup>1</sup> With limited exceptions, the Commission concludes that the revisions comply with Order No. 2003's pro forma requirements or are reasonable variations by an RTO based on its stakeholder processes. Therefore the Commission will accept the proposed revisions, subject to PJM filing revised tariff sheets consistent with the changes required by this order. The instant filing will be effective the date that this order issues. Any additional revisions that are required to conform to Order No. 2003-A will be effective as of the date an order issues addressing those changes.<sup>2</sup> This order benefits customers because it ensures that the terms, conditions, and rates for interconnection service are just and reasonable.

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<sup>1</sup> Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs., Regulations Preambles ¶ 31,146 (2003) (Order No. 2003), order on reh'g, Order No. 2003-A, 69 Fed. Reg. 15,932 (March 26, 2004), FERC Stats. & Regs., Regulations Preambles ¶ 31,160 (2004) (Order No. 2003-A), reh'g pending; see also Notice Clarifying Compliance Procedures, 106 FERC ¶ 61,009 (2004).

<sup>2</sup> Id., Notice Clarifying Compliance Procedures, 106 FERC ¶ 61,009 at P 3 (2004).

## **I. Background**

2. In Order No. 2003, pursuant to its responsibility under sections 205 and 206 of the Federal Power Act (FPA) to remedy undue discrimination, the Commission required all public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to append to their Open Access Transmission Tariffs (OATT), Large Generator Interconnection Procedures (LGIP) and a Large Generator Interconnection Agreement (LGIA). In order to achieve greater standardization of interconnection terms and conditions, Order No. 2003 required such public utilities to file revised OATTs containing the pro forma LGIP and LGIA by January 20, 2004. The Commission also permitted RTOs or Independent System Operators (ISOs) to justify any variation to the pro forma LGIP or LGIA based on regional needs.<sup>3</sup>

## **II. Notice and Interventions**

3. Notice of January 20, 2004 filing was published in the Federal Register, 68 F.R. 5851 (2004), with interventions and comments due on or before February 10, 2004. Old Dominion Electric Cooperative (ODEC) and the American Municipal Power-Ohio, Inc (AMP-Ohio) intervened and filed protests. Interventions and comments were filed by Tenaska, Inc. (Tenaska) and the PSEG Companies<sup>4</sup> (PSEG). Constellation Generating Group, LLC, and Reliant Resources, Inc. (Reliant) also filed timely interventions and Consumers Energy Company (Consumers Energy) filed a motion for late intervention. The Commission finds that no party will be prejudiced or this proceeding delayed by granting that motion.

4. On February 25, 2004, PJM filed an answer to the protests and comments. On March 11, 2004, ODEC moved to file an answer to PJM's February 25 filing. Rule 231(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.231(a)(2)(2003), prohibits answers to protests and answers unless otherwise ordered by the decisional authority. We will accept PJM's answer because it has provided information that has assisted us in our decisional process. We are not persuaded to accept ODEC's answer and will, therefore, reject it.

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<sup>3</sup> See Order No. 2003 at P 827.

<sup>4</sup> The PSEG Companies are Public Service Electric and Gas Company and PSEG Power LLC.

### **III. The Compliance Filing**

5. PJM states that its compliance filing provides modifications to Part IV of its existing FERC Electric Open Access Tariff, which already contains detailed, standardized interconnection procedures and terms and conditions for interconnection and construction service agreements. It asserts that the provisions of that Part were developed through an extensive stakeholder process and are carefully tailored to the operating provisions and market structures of the PJM region. After noting that Order No. 2003 recognizes an “independent entity variation” for RTOs, PJM states that its tariff is already largely consistent with Order No. 2003’s LGIP and LGIA. It therefore seeks in its filing to add, only as needed, those provisions of the Commission’s LGIP and LGIA standards for which there is no comparable provision in Part IV, and to revise certain terms to make them compatible with the requirements of Order No. 2003. These include provisions addressing the interconnection of small generators, independent transmission companies, and forms for a System Impact Study Agreement, a Generation/Transmission Interconnection Facilities Study Agreement, an Optional Interconnection Study Agreement, and an Interim Interconnection Service Agreement. The proposed changes were developed through the stakeholder process.

### **IV. Discussion**

6. Upon review, the Commission concludes that PJM’s compliance filing generally conforms to the requirements of Order No. 2003. As such, the discussion here will be limited to (1) those provisions that PJM concedes may not conform to the literal requirements of Order No. 2003, but which PJM believes should be accepted under the independent entity variation standard, and (2) issues that are raised by the intervening parties. These matters are in large measure the same and involve deposits for facilities studies, invoicing for facilities, the collateral to be posted for network upgrades, and the cost responsibility of upgrades on an adjoining transmission system. Therefore these variations and the protests will be discussed together. A separate issue involves a continuing challenge to PJM’s method for providing interconnecting generators an opportunity to recover the cost of upgrades to PJM’s network facilities although there was no change in PJM’s tariff in this regard. The Commission determinations are contained under each of the following subheadings. Moreover, because Order No. 2003-A became effective before this order issued, PJM is directed to conform its January 20, 2004 filing to Order No. 2003-A as part of its revised compliance filing.

#### **The Standard for Review**

7. As was noted, Order No. 2003 includes an “independent entity variation” standard that permits an RTO to adopt interconnection procedures that are responsive to specific regional needs. Under this standard the Commission affords an RTO greater flexibility

because an RTO does not own generation, and thus lacks the incentive to discriminate in favor of certain generation or to obstruct access to the grid by independent generators. PJM asserts that as an RTO it is subject to a more flexible standard than that involving an integrated transmission owner that still controls its transmission grid. The Commission agrees that PJM is an RTO that is eligible for this more lenient standard. Nonetheless, even when an RTO is the filing entity, the Commission will review the proposed variations to ensure that they do not provide an unwarranted opportunity for undue discrimination or produce an interconnection process that is unjust and unreasonable.

### **Deposits for Studies and Related Billing Issues**

8. Section 36.6.2 of the revised tariff addresses deposits and billings for the costs of Facilities Studies. At present PJM requires a deposit with the Facilities Study Agreement equal to the greater of \$100,000 or the cost of the study. Order No. 2003 provides for a deposit equal to the larger of \$100,000 or the customer's estimated monthly cost of conducting the study, with the Transmission Provider holding the deposit until settlement of the final invoice.<sup>5</sup> Based on a concern that studies may prove complex, PJM believes that a deposit equal to one month's cost may be too low, and the costs may exceed a deposit before billing can be completed. To mitigate this risk, PJM proposes to require a deposit equal to the greater of \$100,000 or the customer's share of the first three months of the work. If the cost of the study is less than \$100,000, or would be completed in three months, PJM would apply the deposit to the payment of invoices.

9. PJM also proposes to bill quarterly rather than monthly, the latter being the standard under Order No. 2003.<sup>6</sup> This is more favorable to the Interconnection Customer and therefore it is accepted. PJM also proposes that failure to make a timely payment will be cause for the Interconnection Request at issue to be terminated. Order No. 2003 provides that any such default can be cured within 30 days of the default, or if it cannot be cured within 30 days, the cure must begin within 30 days and be completed in 90 days.<sup>7</sup> PJM's tariff provisions are comparable and therefore this proposal is accepted.<sup>8</sup>

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<sup>5</sup> Order No. 2003, pro forma LGIP §§ 8.1, 8.1.1.

<sup>6</sup> Order No. 2003, pro forma LGIP § 12.1.

<sup>7</sup> Order No. 2003 at P 627-28.

<sup>8</sup> See PJM FERC Electric Tariff, Six Revised Volume No. 1, Original Sheets No. 171-172.

10. However, a number of the proposed revisions to section 36.6.2 are protested by PSEG and Tenaska. Tenaska objects to the deposit requirement equal to the greater of \$100,000 or the customer's share of the first three months of work on a facilities study. It asserts that this will make an interconnection more costly than in other control areas because of the greater amount of capital that must be deposited. PJM replies that Tenaska does not have an interconnection project proposed for construction in the PJM territory and therefore it is not injured by this proposal. As such, PJM concludes that the provisions adopted unanimously through its stakeholder process should be adopted given the greater protection afforded the PJM system by its proposal.

11. The Commission concludes that PJM has adequate grounds for concluding that its risk involved in a facilities study, and as such its need for a security deposit, is greater than that of Transmission Owners that have a one month deposit requirement. Unlike most other transmission providers, PJM will bill for the studies on a quarterly rather than a monthly basis. As such, there is a longer period of time before PJM can be assured that the funds will actually be collected. Thus, the requirement of the three month deposit corresponds to the PJM billing cycle and the exposure it has to a potential failure to pay in a timely fashion. As a result the Commission will not require that PJM's deposit requirement conform to the standard in Order No. 2003.

12. PSEG also requests that section 36.6.2 be modified to clarify that whether the word "days" means calendar or business days, that PJM provide a true-up or reconciliation mechanism for its quarterly billing procedure, and the payment period for invoices be increased from 20 to 21 days. The Commission accepts PJM's explanation that the word "days" has always meant calendar days and that the 20 day invoice reflects established PJM commercial practice that has been effective to date. PJM states in its answer that it is willing to permit Interconnection Customers to negotiate for a quarterly reconciliation, provided that it is recognized that there will be a one-quarter lag due to its accounting procedures. The Commission accepts PJM's proffer and directs that the tariff sheets be modified accordingly.

### **Liquidated Damages**

13. Tenaska asserts that PJM's proposal eliminates all provisions providing liquidated damages for construction delays contained in pro forma LGIA Article 5.1 and the right of interconnection customers to suspend construction work under pro forma LGIA Article 17.1.2. Tenaska further states that PJM has not provided an adequate explanation of why these provisions should be removed from the interconnection procedures beyond stating that the provisions were approved through its stakeholder process. Tenaska also disagrees with PJM's reasoning that a provision giving the Interconnection Customer the right to suspend construction work may affect the construction of projects by generators lower in the queue, and therefore is unacceptable. It asserts that this provision affects

important protections to Interconnection Customers and the Commission expressly rejected this argument in Order No. 2003.<sup>9</sup>

14. PJM contends that its stakeholders adopted the “Option to Build” provisions of pro forma LGIA Articles 5.1.3 and 5.2 within section 83.2.3 of the PJM Tariff which provides a means for generation developers to manage concerns about construction delays and in lieu of liquidated damages. It states that section 83.2.3 allows the Interconnection Customer the right, but not the obligation (under the “Option to Build”), to design, procure, construct and install all or any portion of the Transmission Owner Interconnection Facilities and/or any Merchant Network Upgrades. PJM asserts that this provision is available in the event that the Interconnected Transmission Owner and the Interconnection Customer are unable to agree upon the terms of a Construction Service Agreement on or before the date that is 30 days after Interconnection Customer’s execution of the Interconnection Service Agreement. PJM also states that its stakeholders debated but rejected the suspension provision discussed at P 409 of Order No. 2003.

15. Order No. 2003 requires a Transmission Provider to give the Interconnection Customer the opportunity to build any Stand-Alone Network Upgrades and Transmission Provider’s Interconnection Facilities if the Transmission Provider rejects the Interconnection Customer’s milestones. This serves to prevent delay and discrimination on the part of a Transmission Provider.<sup>10</sup> Contrary to Tenaska’s suggestion, Order No. 2003 does not require liquidated damages.<sup>11</sup> Rather it offers liquidated damages only when the parties agree, and then as one option in dealing with the risks and uncertainties that may arise from construction. The alternative provisions PJM has developed that give the Interconnection Customer the right to construct the Network Upgrades, and to halt construction by the Transmission Provider, are sufficient protection for the Interconnection Customer in the RTO context. As such, there is no need for a liquidated damages provision.

16. However, PJM has not satisfactorily explained why an Interconnection Customer should be prohibited from suspending a project for up to three years. Its explanation is two-fold: that the stakeholder group made this determination and that suspension would unfairly impact customers lower in the queue. The Commission finds that, although

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<sup>9</sup> Order No. 2003 at P 409.

<sup>10</sup> Order No. 2003, LGIA Article 5.1.3.

<sup>11</sup> Order No. 2003 at P 856-58.

PJM's proposal is the result of the stakeholder process, a stakeholder process may sometimes reach results that may be discriminatory to parties who were not involved in the process, or that may be inconsistent with the purposes of Order No. 2003. While RTOs lack the same incentives for discrimination as vertically integrated transmission owners, variances from Order No. 2003 must still be explained in light of that order. As Tenaska states, the Commission specifically determined that the right to suspend a project for up to three years was important to provide the flexibility necessary to accommodate permitting and other delays that are likely to affect large projects. In this regard, the economics of projects locating on the PJM system are the same as in other parts of the county, and PJM must comply with pro forma LGIA Article 5.13.

17. PSEG also objects to sections 36.7 and 36.8.4 of the revised tariff PJM filed here. It raises the definition of the word "day" with regard to both sections, a matter that was previously resolved. PSEG further notes that section 36.7B of the PJM tariff appropriately adds an option for an Interim Interconnection Agreement to facilitate the payment of long-term lead items. This provides a means of securing such items while other aspects of the agreement are being negotiated. Thus, while an Interim Interconnection Agreement would be helpful in ordering materials while the balance of the Agreement is negotiated, it notes that there are no provisions for posting security to cover the costs the Transmission Owner may incur under such an agreement to reduce the risk that the Transmission Owner may incur in implementing such an agreement. It suggests incorporating the security concepts contained in section 36.8.4(b) of the PJM tariff into section 36.7B. PJM states it has no objection to this change and therefore the Commission directs PJM to include such a provision in the revised tariff sheets required by this order.

18. PSEG's comments on section 36.8.4 also address the three-month payment provision previously discussed, and it also suggests that cash be listed as acceptable collateral to meet security requirements. The first point has been addressed earlier in this order. Regarding cash being accepted as collateral, Order No. 2003 is silent on this point and cash would appear to be a universally acceptable medium, and therefore there is no need to require PJM to modify its tariff. PSEG also notes that section 36.8.4(b) requires that a generator provide six months of payments to PJM as security, consisting of three months billing and three months of construction costs. It asserts this could lead to excessive collateral for small projects that require three months or less to construct. It suggests that total collateral requirements be capped at 125 percent of the total estimated project costs. PJM is willing to accept this limitation and is directed to include such a provision in its revised compliance filing.

**Recovery of the Cost of Network Upgrades**

19. Both ODEC and Tenaska assert that PJM's Firm Transmission Rights (FTRs), Capacity Interconnection Rights (CIRs) and Incremental Auction Rights (ARRs) provisions<sup>12</sup> do not provide adequate opportunity for an Interconnection Customer to recover the cost of Network Upgrades required as a part of an Interconnection Agreement. They assert that there are no assurances that capacity created by Network Upgrades will result in FTRs, CIRs, or ARRs of sufficient value to provide recovery of the investment made by an Interconnection Customer. PJM replies that both ODEC and Tenaska are attacking the "but for" provisions of the PJM tariff, which require an Interconnection Customer to pay 100 percent of the Network Upgrades that must be made for the Interconnection Customer to connect to the PJM grid. It states that the Commission concluded in Order No. 2003 that the "but for" system encourages economic efficiency in an RTO system with locational marginal pricing and little incentive to discriminate against interconnection customers.<sup>13</sup>

20. The Commission concluded in Order No. 2003 that it was acceptable for an independent entity to offer Interconnection Customers FTRs and AARs in exchange for payments for Network Upgrades.<sup>14</sup> As PJM states in its answer, the "but for" method it uses to determine what payments must be made by an Interconnection Customer provides incentives to locate new generation in an efficient fashion. A generator locating where there is existing capacity will incur lower network costs, but any ARRs resulting from the construction may have lower value. Generators that locate where congestion is higher and more network capacity is required are likely to have higher network costs, and any ARRs obtained may have more value due to the relief provided to transmission customers using that portion of the system. However, since the Network Upgrades are a form of participant financing that may be required by an independent Transmission Owner, there is no requirement that ARRs awarded for Network Upgrades have equal value to the cost of the Network Upgrades, as the costs would not exist "but for" the proposed interconnection. They are part of a project's construction cost and business risk, and the Interconnection Customer must consider those cost in determining whether the project is

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<sup>12</sup> FTRs are used as a hedge against congestion over specific paths on the PJM system. These are tradable in a monthly auction market that establishes their value. CIRs and ARRs can be created by upgrades to the system. ARRs are replacing FTRs on the PJM system.

<sup>13</sup> Order No. 2003 at P 700-703.

<sup>14</sup> Id.



economically worthwhile.<sup>15</sup> For these reasons, the Commission rejects the protests regarding PJM's "but for" policy for the costs of Network Upgrades, and the related issues involving FTRs, CIRs, and ARRr.

### **Miscellaneous Issues**

21. AMP-Ohio requests that PJM be required to clarify that the tariff language at issue here does not apply to interconnections that are internal to the grid of a non-jurisdictional transmission owner. PJM states that no such clarification is required since PJM's authority applies only to interconnections to the jurisdictional facilities it is charged with managing. The Commission agrees with PJM. ODEC requests that the instant filing be subject to any rehearing order addressing Order No. 2003-A. PJM is obligated to comply with such a rehearing order in any event. Finally, the Commission notes that footnote 8 to the transmittal letter of the January 20, 2004 filing states that each Interconnection Service Agreement will include as an attachment the standard terms and conditions of Subpart E of the tariff in effect on the date of execution of the agreement. PJM states that the purpose of the attachment is to assure that PJM does not unilaterally change the terms of the agreement after it is executed through a tariff filing. The Commission does not object to the parties incorporating the standard terms and conditions by attachment as long as all of the standard terms and conditions that are part of the tariff at the time the agreement is executed are included.

22. In its review of PJM's compliance filing the Commission found there are additional issues raised by the insurance provisions contained in section 63 of PJM's existing interconnection tariff.<sup>16</sup> When PJM first filed tariffs governing interconnection procedures on March 18, 2002, the Commission recognized that the procedures filed at that time might not conform in all regards to the uniform standards that the Commission was pursuing in Standardization of Generator Interconnection Agreements and Procedures, Notice of Proposed Rulemaking.<sup>17</sup> Therefore the Commission accepted PJM's March 2002 filing subject to the outcome of that proceeding.<sup>18</sup> PJM's current

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<sup>15</sup> See FPL Energy Marcus Hook, L.P. v PJM Interconnection, L.L.C., 107 FERC ¶ 61, 61,069 (2004).

<sup>16</sup> See PJM's FERC Electric Tariff, Sixth Revised Version, Original Sheet Nos. 167-169.

<sup>17</sup> 99 FERC ¶ 61,085 (2002).

<sup>18</sup> Old Dominion Electric Cooperative v. PJM Interconnection, L.L.C. and PJM Interconnection, L.L.C., 99 FERC ¶ 61,189 (2002) at 61,774.

insurance provisions include a requirement for \$5 million of professional liability insurance, and the tariff language does not contain certain administrative provisions included in sections 18.3.6 through 18.3.11 of the model LGIA contained in Order No. 2003.<sup>19</sup> The Commission is not holding here that PJM is precluded from continuing to use its existing insurance provisions. However, to the extent that those provisions vary from the standard insurance provisions in Order No. 2003, PJM should have called this to the Commission's attention and provided an explanation of why the variation remains appropriate. Therefore, the Commission directs PJM to file such an explanation within 30 days after this order issues, together with any revised language PJM may choose to adopt to track more closely the standard insurance provisions contained in Order No. 2003.

The Commission orders:

(A) PJM's proposed revisions to its FERC Open Access Transmission Tariff filed in this docket on January 20, 2004, to comply with Order No. 2003, are accepted and rejected as stated in the body of this order, to be effective the date this order issues.

(B) PJM shall file the revisions and explanation required by this order, including any modifications necessary to conform to Order No. 2003-A, within 30 days after this order issues.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.

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<sup>19</sup> See section 18.3 of Appendix 6 to Order No. 2003, III FERC Stats. & Regs. Regulations Preambles, ¶ 31,146 at 30,656-57.